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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 IN RE: APPLICATION OF
4 HORNBEAM CORPORATION,

14 MC 424

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New York, N.Y.
December 23, 2014
2:00 p.m.

7 Before:

8 HON. VERNON S. BRODERICK,

9 District Judge

10 APPEARANCES

11 HOLLAND & KNIGHT LLP
Attorneys for Hornbeam Corporation
12 BY: JAMES H. POWER
SEAN BARRY
13 WARREN GLUCK

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1 (Case called)

2 THE COURT: If the party would just note your
3 appearance for the record, that would be great.

4 MR. POWER: James Power, of Holland & Knight, for the
5 applicant, Hornbeam Corporation.

6 THE COURT: Okay.

7 MR. BARRY: Sean Barry, Holland & Knight, for the
8 applicant, Hornbeam Corporation.

9 MR. GLUCK: Warren Gluck, Holland & Knight, for the
10 applicant, Hornbeam Corporation.

11 THE COURT: Okay, great.

12 Now, I have all the papers here. You may be seated.
13 It's fine if you want to remain seated as I ask questions or
14 when you address at least the questions I have in the order
15 that I issued. I think, just to give you a sense of at least
16 where I am on this, with regard to the initial showing, in
17 other words, under the law, under 1782, I think from what I
18 have seen, I would find that I have jurisdiction.

19 I also believe, with regard to certain of the factors,
20 the next factors I look at, whether the requested material
21 within the foreign tribunal's jurisdictional reach, not
22 necessarily, I don't think, so I think you meet that criteria.

23 Really where it comes down to is the connection
24 between the lawsuit or the impending lawsuit and the request
25 for the materials. And, in addition, the breadth of the

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1 subpoena, because what I didn't see in the papers was a nexus
2 first between the expected litigation and these particular
3 financial institutions and what the relationship was with them.
4 It may be that you have that information and it's just not in
5 the papers, and then on top of that, a more targeted subpoena
6 based upon that, in other words, if you -- you know it was with
7 regard to certain transactions and you know it was with regard
8 to, or certain entities that were related, that have a
9 relationship to the underlying dispute. As I understand it, in
10 essence, they had a joint venture, for lack of a better term,
11 the other parties to the joint venture -- in other words, not
12 your client -- the allegation is, siphoning off money by
13 saddling the company, their jointly owned company, with loans
14 and debts to basically entities that are related to them and in
15 an apparent effort is to sort of drive your client out or to
16 freeze him out in some way.

17 I guess we can start with the questions that I have in
18 the order. The first question, obviously, while I noted that
19 there are times when you don't necessarily need to, that even
20 if -- you couldn't get the documents because of the British
21 Virgin Islands laws, you still may be entitled to it, but in
22 light of I guess the breadth of the request, it does seem that
23 there may be more to it, it's not just that you can't
24 specifically get them, it is -- I guess why don't we start out
25 with the general proposition: Do you or your client have more

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1 information, and then, separate and apart, I'd like to talk
2 about White & Case and PricewaterhouseCoopers, but on the
3 overall, is there more information that you have that you could
4 supplement the record with that establishes a little more of
5 the nexus between the expected litigation and these particular
6 entities?

7 MR. POWER: Your Honor, would you mind if I sit?

8 THE COURT: No, that's fine. Just bend the
9 microphone, pull it towards you so that the court reporter can
10 hear everything you're saying.

11 MR. POWER: Thank you. Let me start by advising the
12 Court that this is one of four 1782 applications that we are
13 going to bring. The reason why we're bringing it here in
14 New York is, we believe with sufficient confidence that there
15 are certain entities and institutions here within this district
16 that possess information that is going to be relevant to the
17 BVI proceedings. We are bringing an action in Ohio which is
18 where many of these counterparties to these loans are. It's
19 unfortunate that our subpoena is large in scope because of the
20 number of entities that we're putting loans on here.

21 So, unfortunately, we're just following the amount of
22 entities that we are identifying as relevant. It doesn't seem
23 that the defendants in these actions have had any limits to the
24 amount of offshore companies, and even U.S. onshore companies,
25 that they use to facilitate the scheme we called in which they

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1 have been doing this in terms of encumbering Warren Steel with
2 debt. So that is why there is unfortunately a larger scope.
3 We feel it is quite related to the information and their own
4 activities with respect to Warren Steel. We are filing an
5 action in Ohio for Warren Steel itself in Florida and in
6 Delaware where many of these entities, the Optima entities, are
7 registered.

8 So the New York subpoena, the 1782 action that we are
9 looking to file, the banks that we are targeting -- we don't
10 have information that any of these defendants or entities have
11 bank accounts at these New York banks; they are simply
12 intermediary banks which possess third-party records in the
13 normal course of business. Every time funds are channeled from
14 outside of the United States, in U.S. dollars, inside the
15 United States, what we believe, to contribute to the funding of
16 these loans, they are recorded in an instant blink of an eye, a
17 second, within the data system of these banks.

18 The records are maintained -- we get these all the
19 time, we've done these 30 times before. The banks have never
20 once objected. It literally is an exercise, even if there are
21 30 entities we are asking the banks to search for, and these
22 are search terms, basically they look at the originators, they
23 look at the recipient, and they put it in the reference section
24 of their computer programs, and it spits out data and it comes
25 in an Excel spreadsheet, and usually within two weeks they send

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1 it to us by email.

2 I brought with me today some sample documents in
3 another case that we got where we served a subpoena which was
4 quite broad in the names of the entities that we were seeking.
5 The banks literally, again, within two weeks responded, never
6 an objection. Sometimes they asked for protective agreement,
7 saying that we'll use the information only in actions related
8 to these causes of action in other jurisdictions, not for any
9 purpose whatsoever but just limited to BVI or Cyprus or
10 whatever.

11 I also have a sample of what the information typically
12 looks like. They produce it to us by email in an Excel
13 spreadsheet.

14 So, in terms of what the banks have, we know well what
15 they have, they do process these transactions and to the extent
16 that the funding, which is a big concern of ours, where did all
17 these Optima entities get the hundred million dollars to loan,
18 we don't know if truly this money was transferred, if it's in
19 fact just paper loans. So one of the ways in which we
20 documented, I think, in our papers and from evidence we've seen
21 in other court filings, is that Kolomoisky, Mr. Kolomoisky, and
22 Bogolubov used certain entities to facilitate their transfer of
23 dollars into the United States, and those are entities which we
24 have listed, like Divot, for example, which was one of the
25 original funding entities.

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1 So what the information that the banks in New York
2 will give us -- and there are only like seven, maybe eleven
3 banks that we're serving -- what they will give us is the
4 record of the transactions, reference not necessarily going
5 directly to Optima Ventures but if it references Optima
6 Ventures, so it may be sent to some other company we don't even
7 know about with a reference "Optima Ventures loan transfer."
8 That's why this is sort of a very necessary exercise to round
9 out the information that is used and to verify information that
10 may be produced from other sources.

11 It also further supports the ownership structure of
12 these Optima entities. There has been suggestion in our
13 papers, based on third-party information, that Kolomoisky and
14 Bogolubov do own or firmly own all these Optima entities. So
15 of course, if we can prove that they do, by showing the
16 transfers of funds from their foreign-controlled offshore
17 entities into one or more of these related parties, which then
18 in turn encumbered Warren Steel, that is the type of
19 information that is going to be introduced and useful to the
20 claims in the BVI.

21 THE COURT: The question I have, it's really how you
22 know that these banks -- that's the place where, as we're
23 looking through the papers, I just couldn't find that
24 connection.

25 MR. POWER: Well, two things: One is, the five years

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1 of previous experience we've had subpoenaing these
2 correspondent banks. There are only a handful of
3 New York-located banks that really are in the business of
4 processing these international transfers. Some banks come into
5 the market wanting to do it and some banks sort of on a
6 year-to-year basis they decide they do not want to do this
7 anymore because of sanctions and they don't want to be
8 bothered, so these banks are, in our experience, the banks,
9 collective total, that process these transactions.

10 Do we know which particular bank has processed any
11 transaction? We don't. And the simple fact, when we serve
12 these subpoenas on the banks, the banks will run a search.
13 Sometimes the banks will come back and say, we never found any
14 hits, there was no Optima entities here.

15 It all depends -- which we don't know this
16 information, by the way -- it all depends on the foreign
17 company's financial institution, to which New York bank that
18 foreign institution has a contract with, in which the funds
19 pass through. So sometimes, for example, if it's a bank out of
20 Geneva, Switzerland, that bank may have a contract with
21 JP Morgan to process the U.S. dollar transfers. So of course
22 JP Morgan will have those records.

23 On the other side of the transaction, to the extent
24 that any one of these Optima entities -- and we don't have the
25 bank accounts of these entities so we don't know which U.S.

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1 institution they're using, but let's just say it's Bank of
2 America. Bank of America may also have a contract, ironically
3 enough, with Deutsche Bank, who may process Bank of America's
4 U.S. dollar transactions overseas.

5 So we know for certain, with experience, that the
6 banks we are targeting -- we've even left out some of the banks
7 that are Chinese banks that we don't believe would be
8 processing these transactions because there's no evidence that
9 any of the entities that Kolomoisky or Bogolubov deal with are
10 Asian companies. If we were targeting an Asian/Far
11 East/Hong Kong/Chinese/Taiwanese companies, most likely they
12 would be using HSBC, Bank of China, China Merchants Bank. We
13 have not done that here so we've taken them off the list of
14 possible targets because, again, in our experience, these are
15 the banks that are going to be processing it.

16 So there is never a way that we will know exactly
17 which banks are processing the transactions for sure unless we
18 know all of the foreign entities which Mr. Kolomoisky or
19 Bogolubov are using and which banks they use to send money to
20 these U.S. entities. So we just don't know that. And in part,
21 that's exactly what we're trying to find out, is to identify
22 those companies.

23 The other way that we can ensure that these banks are
24 the proper banks in which to serve these subpoenas is that
25 they're all a member of the clearinghouse association, which

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1 they themselves hold themselves out to be and are publicly
2 listed as the banks that do this clearing.

3 I think for purposes of this allocation, although we
4 can't guarantee that any particular bank has processed any of
5 the transactions that we're looking for, most likely several
6 much them have done these transactions. And, frankly, the only
7 way you ever know is when they run a search. And, again, the
8 search is, as we have been told in the past, by the folks in
9 the banks, the administrative personnel, who are in charge of
10 running these and complying with subpoenas.

11 It takes them not a very long time -- in terms of the
12 manhours, it's small -- and to the extent it is a large
13 request, they issue us a bill, sometimes \$300, sometimes the
14 most we've ever gotten is a thousand dollars. And of course to
15 the extent that there's miss hits involved, the banks will call
16 us, they will ask us for an extension, which are always freely
17 given. The most we've ever had is, I think, a 20-day
18 extension. The holidays, I would assume that the banks will
19 get this and start it. If they don't finish, they'll call us
20 and ask for an extension, which of course will be freely given.

21 So that's where we are quite certain, for the purposes
22 of this application, that these banks are in fact here and
23 possess the information or are likely to possess this
24 information. Some of them definitely do, some of them might
25 not but we won't know.

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1 THE COURT: Just so I have it clear, that is because
2 of the nature of the transactions?

3 MR. POWER: Yes.

4 THE COURT: We're calling them transactions. I guess
5 they are, but really these banks are way stations for the cash
6 that may be part of another transaction but it's the cash
7 that's flowing through?

8 MR. POWER: It's the credits, it's the banking
9 credits. They keep a ledger of sort of debits and credits
10 electronically, you know, I guess in computer terms, ones and
11 zeros, and there's a whole big database for every transaction
12 and they record the foreign entity which made the transaction,
13 the foreign bank which made the transaction, the New York bank
14 which received the credit, the other New York bank which may
15 have then been credited, and the other the beneficiary that
16 ultimately received the funds.

17 So they are simply, as we call them, intermediaries
18 which just generate and maintain information and records. So
19 that's what we're seeking, and they do it in the normal course
20 of business and in a way that can easily be produced because
21 people are often requesting these banks to produce this
22 information.

23 THE COURT: One of their requests is a copy of any
24 orders, instructions, wire transfers, received from payor
25 transfer bank to payee transferee bank for the benefit -- so,

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1 if I understand what you're saying, you don't get tickets --

2 MR. POWER: No.

3 THE COURT: -- you don't get -- and they may, the
4 banks may have, some paper backup or some other sort of stuff
5 but what you accept in response to the subpoena, is that the
6 chart that you had held up --

7 MR. POWER: Yes.

8 THE COURT: -- or the spreadsheet?

9 MR. POWER: An Excel spreadsheet, most often in the
10 form, they either mail it to us or send us a CD. One bank,
11 which is not applicable here, is Bank of China, has sometimes
12 done screen prints.

13 But, no, I know it's all-encompassing and I see where
14 the Court would ask the question that it does seem like they're
15 going to be searching storage boxes somewhere. That's not it
16 at all. This has sort of evolved into a sort of nomenclature
17 which the banks fully understand. And, in fact, they tell us,
18 we're not giving you anything other than the records that we
19 always give you and it's the Excel spreadsheet and that's what
20 we're going to do.

21 THE COURT: And as you know, this is my first time on
22 Part I and maybe that's where -- because in reading the
23 subpoena, it reads like a regular subpoena, where I would
24 expect boat loads of documents, whether they're in electronic
25 or otherwise, but it sounds like the process that you've worked

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1 out with the banks is in essence -- and I will say narrowing
2 and maybe I'm using the term incorrectly, but -- well, let me
3 ask you this: This subpoena, the order that I currently have,
4 from a technical standpoint, if the bank provides you -- I know
5 you're satisfied with that document, but is it really giving
6 you all the documents that you're in fact requesting?

7 MR. POWER: You know, I think it probably is because,
8 remember, we look at this bank not as the deposit institution,
9 right, where you would have the person's signature, your
10 sign-in card; this is simply a record-generator essentially,
11 it's like a data center.

12 THE COURT: Where the money comes out, where it goes
13 out to, and then you have further requests for those entities;
14 if you don't have known the input, you request it from the
15 folks who get the money?

16 MR. POWER: Right. So these banks have no
17 relationship whatsoever with any of the entities that we are
18 looking at here. They are simply checking their computer
19 records to see if they have any hits for transactions with
20 going from, to, or referencing any of these entities.

21 THE COURT: Okay. Let me just take a quick look at
22 something.

23 (Pause)

24 THE COURT: Is the same true with regard to the
25 accounting firms, in other words, how are they -- are those

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1 sort of the usual suspects, for lack of a better term?

2 MR. POWER: No, the accounting firms -- we attached to
3 one of the declarations a U.K. court order -- the accounting
4 firms, which KPMG and PwC, and I'll put in White & Case here,
5 we know they were participating in -- well, let me step back.

6 The Optima entities, which are all U.S.-located
7 entities -- Delaware, Florida, managed out of Florida -- the
8 Optima entities were putting together an IPO filing. Now, I'm
9 not a securities lawyer but I know enough about IPOs, that when
10 you're doing that, there's a huge amount of due diligence
11 involved and lawyers --

12 THE COURT: At least there should be.

13 MR. POWER: At least there should be. We found many
14 instances where there wasn't.

15 From a lawyer's perspective, looking at the
16 information that we have and we submitted to the Court, with
17 these loan transactions and we're saying, you know, it would be
18 very interesting how due diligence, with the allegations that
19 we have asserted here, how due diligence can be done on
20 companies that are sort of loaning this kind of money with
21 these related-party loans, same person signing them. We know
22 that White & Case New York was the entity that was the lawyers
23 preparing the due diligence, they created a database -- and of
24 course we wouldn't be looking for any attorney-client
25 privileged or work product -- KPMG and PwC were also called in

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1 to do some audits of the financial situations of these
2 entities.

3 One could imagine that my argument in the BVI would
4 be, well, you know, what did these Optima entities report?
5 Were they ever going to get their hundred million dollars back
6 for their loans to Warren Steel? And if not, why would they be
7 loaning that kind of money in the first place, knowing Warren
8 Steel could never pay them back? How would you possibly report
9 that to potential public investors in a New York Stock Exchange
10 listing? Did they say this was an unrecoverable debt, never to
11 be paid, or did they say that Warren Steel was worth
12 \$300 million?

13 So I could see -- I would hope the Court could see as
14 well -- that that information -- and I am not saying it's the
15 entirety of what's being maintained by White & Case but
16 certainly there was going to be information in that file, when
17 somebody spends two years preparing for an IPO, which is going
18 to show or going to be used and relevant to our arguments of
19 what is the value of Warren Steel, why would anyone make a
20 hundred million dollars of loans if they didn't believe it was
21 Warren that was going to be able to be paid back, and how could
22 you even think about doing an IPO if you've got a hundred
23 million dollars of loans that could never paid back?

24 THE COURT: So it's the IPO of Warren Steel?

25 MR. POWER: The IPO of the Optima entities.

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1 THE COURT: Of the Optima entities?

2 MR. POWER: Which were the creditors of Warren Steel,
3 issuing all the loans. And the individual that straddles both
4 all of the Optima entities and the Felman Trading and CC
5 Metals, is Mordechai Korf, who is also the president of Warren
6 Steel, who was signing both on behalf of Warren Steel as
7 borrower and all these Optima entities as the lender.

8 THE COURT: Okay. Maybe that is spelled out somewhere
9 in the papers but it's not as clear as I think you've just
10 stated it.

11 MR. POWER: There is a lot of information. I
12 apologize if --

13 THE COURT: No, no, I have no problem; it's actually
14 piecing it together.

15 In particular, I know you just mentioned you're not
16 looking to get attorney-client privileged information. I take
17 it, though, that this is not, although the banks routinely get
18 these, this is not going to be something that the accounting
19 firm or White & Case is something that they would necessarily
20 be expecting?

21 MR. POWER: Expecting? No. Do we get them? Our firm
22 has gotten a 1782 application before. They are done, I can
23 tell you, as a professional working with another law firm, we
24 would certainly do all we could to accommodate them, grant the
25 requests. I know it's the holidays; we wouldn't be expecting

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1 hard deadlines. We would ask them to first just check their
2 records. I think we would, again, work with them on sort of a
3 rolling basis.

4 We don't want this to be unnecessary litigation by us,
5 forcing unreasonable deadlines or unreasonable requests on PwC,
6 KPMG or White & Case. This is an effort to get information in
7 the most reasonably calculated and economic way possible. So
8 that's what I can say about what I anticipate our dealings with
9 White & Case to be.

10 THE COURT: Okay.

11 So to the extent the subpoena asks for bank account
12 information, these entities you're not expecting to have? To
13 the extent -- they don't have traditional bank accounts, they
14 may have access and password rights, but it's not a bank
15 account necessarily they would use, like a checking account or
16 savings account or something like that or even a revolving
17 credit type of thing, it's not that sort of a relationship, as
18 I understand it?

19 MR. POWER: No, not with the intermediary banks, no.
20 They have no contractual relationship with these intermediary
21 banks. And that's also, one of the things that the
22 intermediary banks always tell us -- even if, for example, one
23 of these entities had a contract or had a bank account with,
24 let's just say, Credit Suisse in Switzerland, the Credit Suisse
25 entity in New York says, just so you know, we assume your

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1 request isn't asking for that and even if it does, we're not
2 going to give it to you because we don't maintain that here,
3 that's somewhere else, so you're not getting that but in the
4 end, here you go, here's the disk, the wire transfer records
5 from our search.

6 So we don't expect it, and we don't anticipate
7 receiving that from any of the banks in New York.

8 THE COURT: How are the purchase parties, how are
9 they -- because as I understand, these are the parties that
10 were initially involved in the purchase of Warren Steel?

11 MR. POWER: Yes.

12 THE COURT: How were they involved or relevant to the
13 dispute? Is it in some evaluation? In other words, that was
14 years ago and so I had some questions about that.

15 MR. POWER: Well, again, to basically make sure we
16 have all the information, we wanted to get the records from the
17 intermediary banks, to the extent there are any. They may do
18 their search and say, we just don't have any. So for Instrad
19 and the others, for the purchase parties, we wanted to make
20 sure we had all of the records because, again, it is some time
21 ago and maybe we won't be able to collate all of the records.
22 So this is just one of the ways, to make sure, use all means
23 possible to get the records that are going to be at issue in
24 these cases.

25 THE COURT: I guess typically, have you -- in

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1 connection with the issue about whether or not this sort of
2 request is circumventing what you could do in the BVI?

3 MR. POWER: Yes. We did include the declaration of
4 BVI lawyer Michael Faye. He's quite respected since he was a
5 sitting justice in the Eastern Caribbean court system. What we
6 tried to make clear there -- and maybe it didn't come clear and
7 that's a misgiving on our part -- is, the BVI courts don't have
8 jurisdiction over some of these entities. There's only Holwell
9 is a BVI company, there was only Hornbeam did file an action
10 there, so there's jurisdiction over Hornbeam but it doesn't
11 have jurisdiction over all the Optima entities or even Warren
12 Steel or the third-party entities. So what we tried to make
13 clear is that the BVI court doesn't have the ability to issue
14 subpoenas and so forth.

15 THE COURT: Okay. In other words, it's a
16 jurisdictional issue --

17 MR. POWER: Yes.

18 THE COURT: -- it's not a capacity issue? In other
19 words, if in fact -- you can't get it because the entities are
20 outside of the jurisdiction but not because the BVI courts
21 prohibit getting that sort of information?

22 MR. POWER: No. Now, we did indicate, as is
23 commonplace amongst jurisdictions outside of the United States,
24 I think it's commonly known that jurisdictions other than the
25 U.S. are more constricted in their discovery processes, which

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1 people love to come to the U.S., where discovery is, and they
2 complain about it when they're the subjects of discovery. So
3 the BVI court would not prohibit the introduction of this
4 information. It also just isn't as robust, the ability to go
5 out and get emails, for example, maybe of some third party or
6 those kinds of things.

7 So the scope of the discovery often ordered and
8 permissible in the BVI is more limited than the scope of
9 discovery in the U.S., but that is sort of irrelevant based on
10 the case law on 1782 applications here. The standard is that
11 if the U.S. is more liberal in its discovery rules, compared to
12 the jurisdiction in which the discovery is being sought to be
13 used in, that is not in any way, shape or form a bar to
14 granting that discovery.

15 THE COURT: Okay.

16 Now, you've mentioned you have copies of what is
17 typically produced, so I'd like to see that.

18 MR. POWER: Yes.

19 THE COURT: I can't remember if you said you have
20 copies of other orders that you've obtained.

21 MR. POWER: Yes.

22 THE COURT: Now, is it in connection with this matter?

23 MR. POWER: No, it's in connection with a matter that
24 we filed two months ago. It's a BVI case. I represent a
25 foreign liquidator which was appointed over a BVI company.

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1 We've gotten Chapter 15 recognition here. We've done this in
2 many cases. This is one of the forms that we issue these
3 subpoenas in, not necessarily solely on 1782 but when we
4 represent foreign liquidators who are looking to recreate the
5 company's records when they don't have the books, so it's a
6 very good exercise in how to do this by getting these
7 intermediary bank records. So we did serve the intermediary
8 banks. The subpoena that we served is quite robust, and I can
9 show you a copy of the subpoena, which the banks have responded
10 to. Within two weeks, two banks requested an extension.

11 THE COURT: Okay. Is that here in the Southern
12 District?

13 MR. POWER: Yes. It's the Bankruptcy Court, Southern
14 District.

15 THE COURT: I'll take a look at whatever you have.
16 I'd like to take a few moments. I know -- Counsel, does
17 someone have a flight?

18 MR. POWER: I have a flight to Kansas. But I can hand
19 this up.

20 THE COURT: Yes, if you could.

21 MR. POWER: I would ask: One of them is some
22 emails --

23 THE COURT: Is it something --

24 MR. POWER: If the Court intends to put it into the
25 record, this stuff is usually --

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1 THE COURT: I was not intending to make this part of
2 the record. I recognize this is totally separate proceedings,
3 unrelated to this. You're providing it for my edification --

4 MR. POWER: Yes, your Honor.

5 THE COURT: -- so I see the way that typically
6 institutions respond and where you've gotten applications in
7 the past.

8 I'm just going to go in the back for a short period of
9 time and I will be right back.

10 (Recess)

11 THE COURT: I know I've looked at this, and I looked
12 at what you provided, in particular, the spreadsheet. And to
13 me, there's a disconnect between the spreadsheet and the actual
14 order that I am being asked to sign. And I understand what you
15 have explained to me here today. It wasn't as crystallly done
16 in the application itself. If all you're looking for is what's
17 in the spreadsheet -- and, again, I just don't see how that,
18 when I read through this and it does ask for account
19 information and things like that, and actually -- they don't
20 actually have traditional accounts, as I understand it. So I'm
21 not prepared to sign this today. I'm not saying I won't sign
22 it if the application is made again, and it may be that --
23 because I have never seen one of these, that I am being overly
24 strict with you, but I'll tell you the way I would describe it.
25 You can be seated.

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1 MR. POWER: Okay.

2 THE COURT: It's almost as if this is the initial
3 document request in a litigation that then gets winnowed down
4 to the essence, as the parties have a back-and-forth, and there
5 may be that understanding with the banks, that when they get an
6 order like this, that they provide the spreadsheet. But that's
7 not what the order is, and it seems to me that if all you
8 really want is what's contained in the spreadsheet, then I need
9 to have a little bit more understanding of that, and
10 specifically how what's being requested ties into whether it's
11 the spreadsheet or what you're actually looking to get.

12 MR. POWER: I guess for the Court, the best way to
13 describe it, which would I guess advise the Court, would be for
14 the bank to run a search of its records for these entities,
15 either as a beneficiary, a recipient or in the reference
16 section. The columns -- again, the spreadsheet is hard to read
17 because it's long, it has multiple columns, so in essence
18 that's exactly what we're asking for.

19 And if the order that was written simply to the bank
20 says run a search for these entities as originator, beneficiary
21 or in the reference section, I would be happy to get that.

22 THE COURT: That would be fine.

23 MR. POWER: Yes.

24 THE COURT: I'll look at the exact language but I
25 think that that would be something that I think would be, to

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1 me, more narrowly tailored and get you exactly what you want
2 without having the order in the format it's currently in.

3 MR. POWER: I don't know if there's a technical term
4 for that. Again, over the course of dealings that we have
5 arrived at what the banks understand, they have tailored it
6 now, again, to the extent we just say they're to provide us
7 their records when they do their search for beneficiary,
8 recipient and reference, and we can do that.

9 THE COURT: Okay. I know it's the holidays, but I
10 understand you do want to get this. If you want to put
11 something together and send it to my chambers' in-box, you can
12 do that. But just let us know when it's going to be arriving.

13 MR. POWER: Well, will have to go back, leave for a
14 flight, but my colleagues here will go to the office, they will
15 revise the proposed order and where -- do you have a copy of
16 the order here where it says for the banks instead of, as the
17 Court noted, instead of any and all receipts and those kinds of
18 things, copies, instructions, wire -- simply just saying copies
19 of wire transfer records where these listed entities are
20 beneficiary, originator, or in the reference.

21 THE COURT: Okay. It sounds as if the banks will
22 understand that and provide you with that --

23 MR. POWER: Yes.

24 THE COURT: -- I think more narrowly tailored
25 information. I don't know how to do the same thing with the

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1 White & Case section and the accounting section. I don't know
2 what their reaction to this is going to be, but the one thing I
3 would say is -- and thanks to my law clerk, he caught this
4 because I was misreading it -- when you say for the documents
5 from White & Case and Pricewaterhouse, when you say for the
6 production of the following nonlegally privileged documents, it
7 shouldn't be definitional, in other words, then you have a
8 list; I think it should be something along the lines of, for
9 the production of the following, to the extent they are
10 nonlegally privileged documents, because, in other words,
11 it's -- I don't know whether these are. And that may be what
12 you intended, I don't know, but if you could tweak that.

13 MR. POWER: We don't want to fight over
14 attorney-client legal documents. That's not --

15 THE COURT: Exactly. I was going to add that language
16 in there anyway --

17 MR. POWER: Yes.

18 THE COURT: -- and I recognize that. You've freely
19 said that to me.

20 Okay, so why don't you take care of that and then we
21 will take a look at the order when it comes back.

22 MR. POWER: Will do.

23 THE COURT: Thank you very much.

24 MR. POWER: Thank you, your Honor.

25 THE COURT: We will stand adjourned.

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1 MR. POWER: Your Honor, could we email it? I did
2 receive an email from someone on Saturday.

3 THE LAW CLERK: Yes, to the Brodericknysdchambers
4 account.

5 MR. POWER: Could we email you a revised Word
6 document?

7 THE LAW CLERK: Yes. That's great.

8 MR. POWER: Thank you.

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